

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

BENJAMIN KARL SMITH,

Plaintiff,

vs.

MR. HENSON, WARDEN FENDER,
D.J. GODFREY, ASST. WARDEN
POWELL, CHAPLIN DELELLA, and
MR. MADRID,

Defendants.

CV-18-08-GF-BMM

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

Plaintiff Benjamin Smith filed a Complaint on January 16, 2018, alleging the violation of his First, Eighth, and Fourteenth Amendment rights and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc et seq. (Doc. 2.)

Defendants Mr. Henson, Warden Fender, Mr. Madrid, Assistant Warden Powell, and Chaplain Delella (“CoreCivic Defendants”) filed a Motion for Summary Judgment on April 26, 2018, arguing that Smith failed to exhaust his administrative remedies before filing his Complaint. (Doc. 16.) United States Magistrate Judge John Johnston entered Findings and Recommendations in this

matter on September 18, 2018. (Doc. 23.) Judge Johnston found that Smith did not exhaust Crossroad Correction Center's administrative grievance procedure. (Doc. 23 at 9.) Judge Johnston recommended that the Court grant CoreCivic Defendants' Motion for Summary Judgment. (Doc. 23 at 9.)

Defendant D.J. Godfrey filed a Motion to Dismiss pursuant to Rule 12(b)(6) on February 23, 2018. (Doc. 9.) Godfrey contends that Smith's complaint does not satisfy the Rule 12(b)(6) standard for two reasons. (Doc. 9 at 2-3.) First, Godfrey is employed at Montana State Prison, not at Crossroads Correctional Center ("CCC") where the alleged violations occurred. (Doc. 9 at 2-3.) Second, Godfrey's position as the contracts bed coordinator has nothing to do with religious programming, the basis of Smith's complaint. (Doc. 9 at 3.) Because Smith failed to exhaust his administrative remedies, Judge Johnston recommended that the Court deny Godfrey's motion to dismiss as moot. (Doc. 23 at 12.)

No party has filed objections. The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

Accordingly, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 23) is ADOPTED IN FULL.

IT IS FURTHER ORDERED that CoreCivic Defendants' Motion for Summary Judgment (Doc. 15) is GRANTED.

IT IS FURTHER ORDERED that Defendant D.J. Godfrey's Motion to Dismiss (Doc. 9) is DENIED AS MOOT.

DATED this 29th day of October, 2018.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Brian Morris
United States District Court Judge